IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY JURISDICTION

NOTICE OF MOTION NO.151 OF 2006
IN
PETITION NO.25 OF 2002

Re: Tushar Shantilal Lunkad ..Insolvent.
Ex-parte :
Anagram Stock Broking Ltd. .. Petitioning Creditor.

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Mr. Tushar Goradia for the Petitioning Creditor.
Mr. Jayant Gaikwad i/b Ajay Khandhar & Co. for the Insolvent.
Mr. Manish Doshi i/b Vimadalal & Co. for State Bank of India.
Mr. Y.C. Parikh, Official Assignee present.

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CORAM: DR. D.Y. CHANDRACHUD, J.

5th December, 2006.

P.C. :

1. This Notice of Motion was taken out under Section 21(1) of the Presidency Towns Insolvency Act, 1909 for an annulment of the order of adjudication that was passed against the Insolvent on 5th August, 2003. Annulment has been sought on the ground of full payment. In paragraph 3 of the affidavit in support of the Notice of Motion, a reference has been made to the Schedule of assets and liabilities lodged with the Insolvency Registrar. The Schedule of Assets and liabilities discloses that an amount of Rs.17,87,391/- was due and payable to the State Bank of India and it has been

averred that the bank is a secured creditor which holds securities to the extent of Rs. 4 to 5 crores. At that stage, since the attention of the Court had been drawn to the fact that the State Bank of India was a creditor, this Court had by an order dated 17th October, 2006 considered it appropriate to issue notice to the State Bank before the prayer in the Motion could be considered.

2. In pursuance of the notice of the Court, State Bank of India has appeared before the Court through counsel. An affidavit dated 5th December, 2006 of Mr. S.K. Sahoo Deputy Manager of the State Bank of India has been placed on the record. The affidavit sets out that an amount of Rs.6,22,15,306/- together with future interest from 1st December, 2006 is due and payable in pursuance of a recovery certificate issued by the Debt Recovery Tribunal in Original Application 20/P/ of 2001 and in addition thereto an amount of Rs.8,60,32,863/- is due and payable together with future interest from 1st December, 2006 under a recovery certificate issued by the Debt Recovery Tribunal in Original Application 13/P/ of 2001. Copies of the recovery certificates have been annexed at Exhibits 1 and 2 to the affidavit in support.

3. An Insolvent who seeks an order of annulment is duty bound to place before the Court a complete and correct statement of the outstanding liabilities. The Insolvent had filed a Schedule of assets and liabilities after the order of adjudication and it is abundantly clear that the statement to the effect that an amount of Rs.17.86 lacs is payable to the State Bank of India is patently false. The statement in the affidavit in support to the effect that the Insolvent was not personally liable to the State Bank is also manifestly untrue having regard to the two recovery certificates. The State Bank in its affidavit has stated that it is not a fully secured creditor and that the amounts which are due and payable as quantified in the affidavit are after the realization of the full securities. In these circumstances, it is apparent that the Notice of Motion is manifestly an abuse of the process. No such relief as prayed under Section 21(1) can be granted. The Motion is dismissed.